

June 15, 2011

OIL & GAS DOCKET NO. 09-0267874

COMMISSION CALLED HEARING ON THE COMPLAINT OF ANTHONY LAMPO AND BILLY McDONALD CONCERNING THE GM PETROLEUM COMMINGLING PERMIT NO. 09 8723, JEFFREY EST. "A" (27192) LEASE, JEFFREY ESTATE "B" (27383) LEASE, JEFFREY ESTATE "C" (27567) LEASE, AND JEFFREY ESTATE -A- (29495) LEASE, SEACLIFF (MISSISSIPPI) FIELD, YOUNG COUNTY, TEXAS.

APPEARANCES:

FOR COMPLAINANTS:

Anthony Lampo
Billy McDonald

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR HEARING:	October 19, 2010
DATE OF NOTICE OF HEARING:	October 25, 2010
DATE OF HEARING:	November 10, 2010
HEARD BY:	Marshall Enquist, Hearings Examiner
DATE PFD CIRCULATED:	June 15, 2011

STATEMENT OF THE CASE

This hearing was called as a result of the prior complaint of Anthony Lampo and Billy McDonald (hereinafter "Complainants" or "Lampo" and "McDonald"), designated Complaint No. 2010-104, that GM Petroleum, although operating under authority of RRC Commingling Permit 09 8723, had failed to protect the rights of working and royalty interest owners on the Jeffrey Estate "A" (27192) Lease, the Jeffrey Estate "B" (27383) Lease, the Jeffrey Estate "C" (27567) Lease and the Jeffrey Estate -A- (29495) Lease. Complainants also asserted that GM Petroleum failed to properly and accurately allocate production from the leases to the interest owners.

In Complaint No. 2010-104, Examiner Jim Doherty issued a letter dated September 2, 2010, notifying GM Petroleum of the complaint against it, and requesting that GM Petroleum describe the
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method by which production was allocated to each lease covered by the commingling permit. In addition, GM was asked to explain the fact that only one well, the Jeffrey Estate -A- (29495) Lease,

Well No. 1 was shown on the Oil Proration Schedule to be a producing well, whereas the remaining wells were shown on the Oil Proration Schedule to be either not producing or shut-in with Statewide Rule 14(b)(2) extensions. Despite the evidence in Commission records that three of the leases were shut-in with Statewide Rule 14(b)(2) extensions, GM had reported production from all four leases during 2010.

GM did not reply to Examiner Doherty's September 2, 2010 letter. By letter dated October 6, 2010, Examiner Doherty informed Lampo and McDonald of GM's failure to respond. Examiner Doherty informed Lampo and McDonald that the Commission had limited jurisdiction in the matter and could not determine title issues or whether royalty payments were being made in accordance with each mineral owners mineral title. Complainants were informed that the Commission's jurisdiction would be limited to a determination of whether aggregated production from the subject leases was being accurately attributed to each individual lease. Lampo and McDonald elected to request a hearing, which resulted in the present docket.

The call of the hearing, issued October 25, 2010, was on the complaint of Lampo and McDonald that production from the four leases was not being properly measured before leaving each lease and/or that commingled production from the leases was not being allocated to the individual leases such that a fair share of production was being accurately attributed to each royalty interest in the leases as required by Statewide Rule 26. Further, the call of the hearing stated that the Commission would 1.) consider whether Commingling Permit 09 8723 was properly approved administratively or whether notice to working or royalty interest owners was required, 2.) whether production was accurately being reported to the Commission for each of the referenced leases, 3.) whether commingling of production from the referenced leases was protecting the correlative rights of working interest and royalty interest owners, 4.) whether the method of allocation was accurately attributing to each interest its fair share of aggregated production, 5.) whether Commingling Permit 09 8723 should be modified, suspended or canceled, and 6.) whether GM Petroleum should be ordered to place the four leases into compliance with Statewide Rule 26 or any other applicable Commission rule.

The Notice of Hearing also stated that failure of GM Petroleum to appear at the hearing might result in modification, suspension or revocation of Commingling Permit No. 09 8723 and/or in the issuance of an order requiring GM Petroleum to bring the four leases into compliance with Statewide Rule 26 and any other applicable Commission rule, without further notice or opportunity for hearing.

A hearing was held on November 10, 2010, at which time Complainants Lampo and McDonald appeared and presented evidence. GM Petroleum did not appear.

APPLICABLE LAW

Statewide Rule 26 (Separating Devices, Tanks, and Surface Commingling of Oil) requires that oil be adequately measured before it leaves the lease from which it is produced and that where tracts do not have identical working interest or royalty interests that there be a method of allocating production to ensure the protection of correlative rights. The method of allocation of production to individual interests must accurately attribute to each interest its fair share of aggregated production.

Texas Natural Resources Code §85.046(c) states “The Commission, after notice and opportunity for hearing, may permit surface commingling of production of oil or gas or oil and gas from two or more tracts of land producing from the same reservoir or from one or more tracts of land producing from different reservoirs if the commission finds that the commingling will prevent waste, promote conservation, or protect correlative rights. The commission may permit the commingling regardless of whether the tracts or commission-designated reservoirs have the same working or royalty interest ownership. The amount of production attributable to each tract or commission-designated reservoir shall be determined in a manner consistent with this title. The commission has broad discretion in administering this subsection and shall adopt and enforce rules or orders as necessary to administer this section.” (emphasis added).

MATTERS OFFICIALLY NOTICED

The examiner has taken Official Notice of the contents of the file in Complaint No. 2010-104, titled “To consider matters related to Commingling Permit No. 8723, issued to GM Petroleum for commingling of production from the Jeffrey Est.”A” (27192), Jeffrey Est. “B” (27383), Jeffrey Est. “C” (27567) and Jeffrey Estate -A- (29495) Leases, Seacliff (Mississippi) Field, Young County, Texas.” The examiner has also taken Official Notice of the Mainframe screens “On-Schedule Lease, Wells, Wellbores by Operator” and “Well Bore Oil Lease Inquiry” for GM Petroleum and the online Production Data Query for the subject leases. The examiner has also taken Official Notice of the P-5 Master Inquiry Screen for Bolt Fuel Oil Company, Inc.

DISCUSSION OF THE EVIDENCE

Anthony Lampo owned 1,580 acres in Young County and also owned 51% of the minerals under that tract. The remaining 49% mineral interest is presumably owned by the Jeffrey Estate. In 2009, Lampo sold 200 acres of his property to Billy McDonald out of the northwestern part of his 1,580 acres. By Mineral Deed dated March 1, 2009, Lampo granted to McDonald an undivided one-fourth (1/4) of the 51% mineral interest owned by Lampo in the 200 acres.

The four leases and their wells at issue in this hearing are the Jeffrey Estate “A” (27192) Lease, Well No. 1A (503-39883), the Jeffrey Estate “B” (27383) Lease, Well No. 1B (503-39945), the Jeffrey Estate “C” (27567) Lease, Well Nos. 1C (503-40072), 1WD (503-33099) and 2C (503-40074); and the Jeffrey Estate -A- (29495) Lease, Well No. 1 (503-39544). There is a fifth lease on the McDonald property, the Jeffrey Estate (29161) Lease, Well No. 2WD (503-35067), but this lease is not included on Commingling Permit No. 09 8723.

There are three wells on McDonald’s 200 acres. These wells are the Jeffrey Estate “C” (27567) Lease, Well Nos. 2 C and 1WD and the Jeffrey Estate (29161) Lease, Well No. 2WD. The remaining wells are on the Lampo property. The four relevant wells on the Lampo property are the Jeffrey Estate “A” (27192) Lease, Well No. 1A, the Jeffrey Estate “C” (27567) Lease, Well No. 1C, the Jeffrey Estate “B” (27383) Lease, Well No. 1B and the Jeffrey Estate -A- (29495) Lease, Well No. 1.

Photographic evidence in the Complaint File shows that the leases and wells are not equipped to produce, with one exception. The Jeffrey Estate "C" (27567) Lease, Well No. 1C, is not equipped to produce and Well No. 1WD is not equipped for production or disposal. The Jeffrey Estate (29161) Lease, Well No. 2WD is not equipped to produce. The Jeffrey Estate "A" (27192) Lease, Well No. 1A is not equipped to produce; a flow line runs toward the well but is not connected to it. The Jeffrey Estate -A- (29495) Lease, Well No. 1 is partially equipped but no electricity is run to the motor and there is no bridle connecting the pump jack and the polished rod. The Jeffrey Estate "B" (27383) Lease, Well No. 1B is not equipped to produce. Flow lines run by the well, but the well is not connected to any flow line. (See Attachments I and II for photographs of representative wells.)

The exception is the Jeffrey Estate "C" (27567) Lease, Well No. 2C on the McDonald property, which has sufficient equipment to produce. It is connected to a flow line leading to the tank battery. However, according to Lampo's testimony, the well has not been operated and has not been produced.

According to Lampo, GM Petroleum has indicated the wells do not need production equipment or connections to a system of flow lines. GM has represented to McDonald and Lampo that the wells will flow and are produced directly into a tank truck. A photograph of the vehicle represented to Lampo to be the collecting tank truck is in the file (see Attachment III).

On November 17, 2008, GM filed a Commission Form P-17 which amended a prior Form P-17 (see Attachment IV). At that time, GM already had commingling authority for the Jeffrey Estate "B" (27383) Lease, Well No. 1 and the Jeffrey Estate "C" (27567) Lease, Well Nos. 1, 2 and 1WD. The November 17, 2008 filing added the Jeffrey Estate "A" (27192) Lease, Well No. 1 and the Jeffrey Estate -A- (29495) Lease, Well No. 1. The applied-for exception was for common storage, with production to be measured separately from all leases before commingling (Section 4, box a.) and the royalty and working interests were noted to be the same with respect to identity and percentage (Section 4, box b.).

By letter dated June 24, 2009, Lampo sent GM an executed copy of the Mineral Deed transferring an undivided mineral interest in 200 acres to McDonald. A copy of the same Mineral Deed was sent to GM by the gatherer, SemGroup (SemCrude, L.P.) by letter dated August 11, 2010. There is no evidence that GM replied to either party or that it began making correct payment according to the newly divided mineral interests. Lampo testified that he received a small royalty payment from GM once a year or once every two years, but that the most recent royalty payment had given McDonald 25% of the royalty from 1580 acres rather than the 200 acres purchased from Lampo. McDonald returned the check.

Lampo does not believe there has been any actual production from the lease and believes the lease has terminated due to lack of production. However, GM continues to report small amounts of production from the lease. Lampo testified that GM has indicated to him that it will continue to report production simply to justify continuation of the lease.

Since January, 2006, GM has reported 1 or 2 BO/month for each lease. However, in June,

2010, GM reported production from each well of 4, 5 or 6 BO/month. By August, 2010, GM reported production of 5 BO/ month for each well and continued to do so through its last production report in February, 2011.

EXAMINER'S OPINION

GM did not respond to the examiner's letter in Complaint File 2010-104, nor did GM respond to the Notice of Hearing in this docket. The evidence before the Commission is that only one well, Well No. 2C on the Jeffrey Estate "C" (27567) Lease, actually has a gathering line running to common storage. However, the evidence before the Commission indicates this well has not been produced.

GM has represented to Lampo and McDonald that production equipment and flow lines are not necessary because the wells will flow naturally and are produced into a tank truck. A photograph of that truck shows a sign on the door that identifies it as operated by Bolt Fuel Oil Co. There is a decal below the identification sign with the letters and numbers "WHP-867". This stands for Waste Hauler Permit 867, a permit issued by the Commission. Waste hauler permits allow trucks to pick up oil and gas waste and BS&W (bottom sediment and waste) from tanks. The permit does not authorize the truck to collect and transport oil. The examiner has officially noticed the P-5 screen on the mainframe for Bolt Fuel Oil Company, Inc. and notes that it has special activity code "WHAUL", which stands for "Waste Hauler". The decal below the Waste Hauler Permit consists of the letters and numbers "SMC-23747", which stands for Specialized Motor Carrier, a permit issued by the Texas Department of Transportation, not the Commission.

Lampo alleges that the Form P-17 filed by GM on November 17, 2008 contains incorrect information and that notice should have been given to the mineral owners. However, this application pre-dated the transfer of the Mineral Deed from Lampo to McDonald on March 1, 2009. The GM application correctly reflected the state of mineral ownership at the time of submission and was properly approved by the Commission. The Form P-17 was correctly filled out and, because the mineral ownership was the same across all the leases at the time of application, notice to the mineral owners was not required.

GM's Form P-17 application stated that production would be measured separately from all leases or individual wells before commingling. There is no evidence in the record of any means of separate measurement of production and GM's failure to appear did nothing to explain how separate measurement of production could be accomplished.

The photographic evidence, combined with the testimony in the record, indicates none of the subject wells has produced. There is no evidence, other than production reports submitted by GM, that any of these leases has produced. Even if there has been production, there is no evidence that it has been accurately measured before leaving the lease or accurately reported to the Commission. Without accurate measurement from each lease, it is not possible to protect the correlative rights of working and royalty interest owners, or allocate to them their fair share of aggregated production.

Recommendation

Pursuant to Texas Natural Resources Code §85.046(c), the Commission has the authority to enter orders as necessary to implement proper surface commingling of oil. In the present case, Commission-granted commingling authority is not being properly implemented. The examiner recommends that the Commission cancel Commingling Permit 09 8723 and require GM Petroleum to place the Jeffrey Estate "A" (27192) Lease, Well No. 1A (503-39883), the Jeffrey Estate "B" (27383) Lease, Well No. 1B (503-39945), the Jeffrey Estate "C" (27567) Lease, Well Nos. 1C (503-40072), 1WD (503-33099) and 2C (503-40074); and the Jeffrey Estate -A- (29495) Lease, Well No. 1 (503-39544) in compliance with Commission Statewide Rule 26.

FINDINGS OF FACT

1. At least ten (10) days notice of the hearing in this docket was sent to all parties entitled to notice. Anthony Lampo ("Lampo") and Billy McDonald ("McDonald") appeared at the hearing and presented evidence and testimony. GM Petroleum did not appear at the hearing.
2. Anthony Lampo was the owner of 1,580 acres in Young County with an undivided 51% of the minerals beneath the tract. In 2009, Mr. Lampo sold 200 acres on his land to Billy McDonald, also transferring by Mineral Deed dated March 1, 2009, an undivided one-fourth (1/4) of the 51% mineral interest owned by Lampo in the 200 acres.
3. GM Petroleum is the operator of the Jeffrey Estate "A" (27192) Lease, Well No. 1A (503-39883), the Jeffrey Estate "B" (27383) Lease, Well No. 1B (503-39945), the Jeffrey Estate "C" (27567) Lease, Well Nos. 1C (503-40072), 1WD (503-33099) and 2C (503-40074); and the Jeffrey Estate -A- (29495) Lease, Well No. 1 (503-39544).
4. GM Petroleum submitted a Form P-17 to the Commission on November 17, 2008, seeking commingling authority for the Jeffrey Estate "A" (27192) Lease, Well No. 1A (503-39883), the Jeffrey Estate "B" (27383) Lease, Well No. 1B (503-39945), the Jeffrey Estate "C" (27567) Lease, Well Nos. 1C (503-40072), 1WD (503-33099) and 2C (503-40074); and the Jeffrey Estate -A- (29495) Lease, Well No. 1 (503-39544).
 - a. The Form P-17 submitted to the Commission by GM indicated that production would be measured separately from all leases and wells before commingling.
 - b. The Form P-17 submitted to the Commission by GM indicated that the royalty and working interests in the leases were the same with respect to identity and percentage.
5. The Form P-17 submitted to the Commission by GM Petroleum on November 17, 2008 was properly filled out and properly processed by the Commission.
6. Following the March 1, 2009 transfer of an undivided one-fourth of Lampo's 51% mineral

interest in 200 acres to Billy McDonald, the royalty and working interests in the four leases covered by Commingling Permit 09 8723 were no longer the same.

7. The photographic evidence and testimony indicate that the leases and wells, save one, are not equipped to produce. The Jeffrey Estate "C" (27567) Lease, Well No. 2C is equipped to produce, but the testimony is that the well has not been operated or produced. The photographic evidence and testimony do not reveal any means of separately measuring the production from the leases or wells before commingling.
8. Absent a means of measuring production from each of several commingled leases, each individual interest cannot be accurately allocated its fair share of aggregated production.
9. By letter dated June 24, 2009, Lampo sent GM an executed copy of the Mineral Deed transferring an undivided mineral interest in 200 acres to McDonald. A copy of the same Mineral Deed was sent to GM by the gatherer, SemGroup (SemCrude, L.P.) by letter dated August 11, 2010. GM did not reply to either communication, nor did it begin making correct royalty payments according to the newly divided mineral interests.
10. Pursuant to Texas Natural Resources Code §85.04(c), the Commission has the authority to permit surface commingling of oil and gas production, if the Commission finds commingling will prevent waste, promote conservation or protect correlative rights. The Commission also has broad discretion in administering commingling and may adopt rules or orders as necessary regarding commingling.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely given to all persons legally entitled to notice.
2. All things have occurred and been accomplished to give the Commission jurisdiction to decide this matter.
3. GM Petroleum is not accurately allocating production among the Jeffrey Estate "A" (27192) Lease, the Jeffrey Estate "B" (27383) Lease, the Jeffrey Estate "C" (27567) Lease, and the Jeffrey Estate -A- (29495) Lease under Commingling Permit 09 8723.
4. Continued commingling authority under Permit 09 8723 will not prevent waste, promote conservation or protect correlative rights.
5. Commingling Permit No. 09 8723 should be cancelled.

RECOMMENDATION

The Examiner recommends that the GM Petroleum Commingling Permit 09 8723 be cancelled and that GM Petroleum be required to place the Jeffrey Estate "A" (27192) Lease, Well No. 1A (503-39883), the Jeffrey Estate "B" (27383) Lease, Well No. 1B (503-39945), the Jeffrey Estate "C" (27567) Lease, Well Nos. 1C (503-40072), 1WD (503-33099) and 2C (503-40074);and the Jeffrey Estate -A- (29495) Lease, Well No. 1 (503-39544) in compliance with Commission Statewide Rule 26.

Respectfully submitted,

Marshall Enquist
Hearings Examiner